

REJOINDER

Claims 1-13, 18-39, 43, 44 and 99-102 are directed to an allowable product. Furthermore, **the species requirement for invention I (see p. 5-6 of the Office action mailed on 4/2/07) is hereby withdrawn and the species of the generic invention set forth in claims 14-15 and 40-42 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.**

Pursuant to the procedures set forth in MPEP § 821.04(b), claims 45, 96-97 and 99-102, directed to the process of making or using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104. Claim 98, directed to the invention(s) of a method of identifying an immunostimulatory nucleic acid comprising measuring a control level of activation of an immune cell population contacted with an immunostimulatory nucleic acid comprising a nucleotide sequence of SEQ ID NO: 1 does not require all the limitations of an allowable product claim, and have NOT been rejoined.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement between groups I and II as set forth in the Office action mailed on 4/2/07 is hereby withdrawn.**

In view of the withdrawal of the restriction requirement as to the rejoined invention, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement

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is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Information Disclosure Statement

The information disclosure statements filed 12/10/08 and 12/22/08 have been considered and initialed copies are enclosed.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Maria Trevisan on 1-12-09.

The application has been amended as follows:

In the claims:

Claims 41, 96 and 98 are cancelled.

Claims 40, 42, 45, 97 and 99-102 are replaced with the following:

Claim 40. The composition of claim 1, wherein the immunostimulatory nucleic acid is provided in an amount effective to stimulate an immune response against an allergen.

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Claim 42. The composition of claim 1, wherein the immunostimulatory nucleic acid is provided in an amount effective to stimulate an immune response against a cancer.

Claim 45. A method for stimulating an immune response in a subject in need thereof comprising administering to a subject a composition comprising an immunostimulatory nucleic acid molecule comprising the nucleotide sequence of SEQ ID NO:1, in an amount effective to stimulate an immune response, wherein the immunostimulatory nucleic acid comprises a CpG motif which is unmethylated.

Claim 97. A method for inducing an innate immune response, comprising administering to the subject a composition comprising an immunostimulatory nucleic acid comprising the nucleotide sequence of SEQ ID NO:1, in an amount effective for activating an innate immune response, wherein the immunostimulatory nucleic acid comprises a CpG motif which is unmethylated.

Claims 99. A composition comprising an immunostimulatory nucleic acid comprising the nucleotide sequence of SEQ ID NO:1, wherein the immunostimulatory nucleic acid is 21-100 nucleotides in length, and wherein the immunostimulatory nucleic acid comprises a CpG motif which is unmethylated.

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Claim 100. A composition comprising an immunostimulatory nucleic acid comprising the nucleotide sequence of SEQ ID NO:1 and an antigen, wherein the immunostimulatory nucleic acid comprises a CpG motif which is unmethylated.

Claim 101. A composition comprising an immunostimulatory nucleic acid comprising the nucleotide sequence of SEQ ID NO:1, wherein the immunostimulatory nucleic acid is single stranded and wherein the immunostimulatory nucleic acid comprises a CpG motif which is unmethylated.

Claim 102. A composition comprising an immunostimulatory nucleic acid consisting of the nucleotide sequence of SEQ ID NO:1, wherein the immunostimulatory nucleic acid comprises a CpG motif which is unmethylated.

Claims 103-105 are added:

Claim 103. The method of claim 45, wherein the immunostimulatory nucleic acid is 21-100 nucleotides in length.

Claim 104. The method of claim 45, wherein the immunostimulatory nucleic acid consists of the nucleotide sequence of SEQ ID NO:1.

Claim 105. The method of claim 45, wherein the composition comprises an antigen.

REASONS FOR ALLOWANCE

The claimed products and methods of the instant application are not anticipated nor rendered obvious by the disclosure of the prior art and therefore found to be allowable.

Status of Claims

Claims 1-15, 18-39, 43, 40, 42-45, 97 and 99-105 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLUWATOSIN OGUNBIYI whose telephone number is 571-272-9939. The examiner can normally be reached on M-F 8:30 am- 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Mondesi can be reached on 571-272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Oluwatosin Ogunbiyi/
Examiner, Art Unit 1645

/Robert B Mondesi/
Supervisory Patent Examiner, Art Unit 1645